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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,942

11/07/2003

John Leo Paul III.

2941

7590

05/17/2005

John Leo Paul III  
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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/605,942

Applicant(s)

PAUL, JOHN LEO

Examiner

Josiah Cocks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-20 and 27-43 is/are rejected.
- 7) ☐ Claim(s) 21-34 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. on 1/24/2005.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed 1/28/2005 is acknowledged.

### ***Interview Summary***

2. Applicant's representative Cliff Vaterlaus contacted the examiner to arrange a telephone interview on 1/24/2005 regarding the merits of the prior Office action. As applicant's representative was not an attorney of the record for the application the examiner requested that a power of attorney authorization be provided to the examiner prior to a discussion of the merits. Applicant's representative faxed an informal copy of a power attorney and indicated that an official copy had been mailed for entry in the application. A copy of this power of attorney is included as an attachment to the examiner's summary of the interview, which in turn is included as an attachment to this Office action. The record shows that no formal copy of the power of attorney nor any change of correspondence address has been matched with the application file. However, in accordance with MPEP § 402 the amendment filed 1/28/2005 signed by Karl Cannon (attorney registration No. 36,468) of the law firm Clayton, Howarth & Cannon, in conjunction with the power of attorney supplied to the examiner prior to the interview are construed as authorization to consider the address of the firm as the correspondence address for the application.

Applicant's response filed 1/28/2005 includes a summary of the substance of the interview as required by MPEP § 713.04.

### ***Drawings***

3. The drawings filed 1/28/2005 are objected to as they do not comply with the requirements of 37 CFR 1.121(d) in that they are not each labeled "Replacement Sheet." These drawings do address the drawing informalities noted in the prior Office action. New drawings reflecting the proposed substantive changes and in accordance with the requirements of 37 CFR 1.121(d) must be submitted in response to this Office action.

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

#### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

#### **Timing of Corrections**

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Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### *Claim Objections*

4. Claims 10-44 objected to because of the following informalities: Each of the independent claims mis-spell --transporting-- as "transpoting". Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 20, 33-38, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20, 33, and 43 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are those between the plurality of burners (claims 20,

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33, and 43) and between the burners and transporter (claim 33) appearing in the claims. None of applicant's figures show a single campfire arrangement with a single transporter and two burners. Instead, applicant shows in Figure 1 a campfire having a single burner, and in Figures 4 and 5 different embodiments of the burner structures. In regard to claims 33, it appears applicant may be attempting to introduce a "kit" claim, however, this is not clear from the response or the specification. For the purpose of an examination on the merits these claims have been regarded as only requiring that the campfires be capable of utilizing two burners.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10-15, 18, 19, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,227,843 to Pederson ("Pederson") (cited in prior Office action) in view of U.S. Patent No. 4,621,608 to Lee ("Lee") (cited in prior Office action).

Pederson discloses an invention similar to that described in applicant's claims 10-15, 18, 19, 39, and 40. In particular, Pederson discloses a portable campfire comprising a transporter (44) for transporting fuel from a fuel source (42). The portable campfire further includes a base (12) supporting a windscreen (20) including a plate portion (see Fig. 3), which in turn supports an annular burner (30) composed of a circular conduit with angled orifices arranged to form a conical flame (see Figs. 3 and 5).



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In regard to claim 39, the presence of the ceramic logs (50) arranged above the burner functions to replicate a natural wood burning (see col. 3, lines 48 through col. 4, line 1). Applicant is unconcerned with providing replicate wood burning features in his campfire. It would therefore have been obvious to a person of ordinary skill in the art to remove the ceramic logs of Pederson since it has been held that omission of an element and its function is obvious when the function of the elements is not desired. See MPEP § 2144.04 (II)(A).

Pederson does not disclose that the windscreen base is formed as multiple legs that each comprise a single piece and are pivotally connected to the windscreen body and arranged to have structure that forms a stop for limiting rotation of the legs.

Lee teaches a portable grill assembly in which a flame is produced that is considered analogous to the portable campfire of Pederson. In Lee, a base supports a windscreen (62) and two legs (48) that are shown to each comprise a single piece of material (see Fig. 1). The legs are pivotally attached to a base (18) by way of tabs (see Fig. 3) and include angular stop portions for limiting rotation (see bent portions adjacent base 18 and Figures 2 and 5).

Therefore, in regard to claims 10-15, 18, 19, 39, and 40, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the windscreen legs of Pederson to be have the pivotal structure taught by Lee as this structure desirably enables elevation of the assembly to an operating position and folding to a storage/transport position (see Lee, col. 5, lines 34-36 and col. 6, lines 20-26).

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9. Claims 16 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson in view of Lee as applied to claim 10 and 39 above, and further in view of U.S. Patent No. 5,901,697 to Oliver, Jr. et al. ("Oliver '697") (cited in prior Office action).

Pederson in view of Lee teach all the limitations of claims 16 and 41 except that the windscreen includes an upward extending edge with a plurality of waves.

Oliver '697 teaches a portable campfire in the same field of endeavor as Pederson. In Oliver, a windscreen (12') includes corrugated ridges (86) with valleys (88) that are considered to constitute waves as recited in applicant's claims (see Figs. 7 and 8). These corrugations are arranged to enable apertures to be located to allow ventilation of the campfire (see col. 6, lines 12-32).

Therefore, in regard to claims 16 and 41, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Pederson to incorporate the waved windscreen of Oliver '697 to allow for holes to be located on the outer surface of the wave/ridge that desirably allow ventilation of the campfire (see Oliver '697, col. 6, lines 16-20).

10. Claims 17, 20, 27-34, 36-38, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson in view of Lee as applied to claim 10 above, and further in view of U.S. Patent No. 6,006,743 to Shimek et al. ("Shimek").

Pederson is considered to show a campfire that includes burner (26) that is removably attached to the windscreen base by bolts and brackets (see col. 3, lines 24-29) and would therefore inherently be capable of receiving a second burner in place of the first burner.

However, neither Pederson nor Lee are considered to the limitations of claims 17, 20, 27-34, 36-



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38, 42, and 43 requiring that the second burner include orifices arranged in a different configuration than the first burner nor that the first burner includes openings that alternate between a location in a side of the burner conduit and its top.

While it is not clear if applicant's claims are properly construed to require a second burner assembly having any particular structure (see the 35 USC 112, second paragraph rejections above), even if they do, a second burner having the orifices as claimed is considered obvious in view of Shimek. Further, the alternating orifices of the first burner as claimed are likewise considered obvious in view of Shimek. Shimek teaches a portable campfire in the same field of endeavor as Pederson. In Shimek, a campfire assembly includes a gas burner unit (10). Shimek expressly note that any particular burner unit may have different size jets for producing more efficient burning and that some patterns of holes and sizes are more efficient than others See Shimek, col. 4, lines 54-58. The examiner considers that this disclosure would suggest to a person of ordinary skill in the art that it would be obvious that the removable burner of Pederson would be replaced by a burner having a different orifice pattern based on a desired level of efficiency. Further, to have arranged a specific pattern or arrangement of orifices, such as a the alternating arrangement claimed (e.g. claim 27) or a specific angle of the orifices (e.g. claim 28) would be simply of optimizing the burner orifice arrangement of Pederson. As made clear by Shimek, varying orifice size and pattern is recognized in the art to be a result effective variable Accordingly, optimizing this size and pattern would be obvious as it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980); and MPEP § 2144.05 (II)(B).

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11. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson in view of Lee and Shimek as applied to claim 33 above, and further in view of U.S. Patent No. 5,901,697 to Oliver, Jr. et al. ("Oliver '697") (cited in prior Office action).

Pederson in view of Lee teach all the limitations of claim 35 except that the windscreen includes an upward extending edge with a plurality of waves.

Oliver '697 teaches a portable campfire in the same field of endeavor as Pederson. In Oliver, a windscreen (12') includes corrugated ridges (86) with valleys (88) that are considered to constitute waves as recited in applicant's claims (see Figs. 7 and 8). These corrugations are arranged to enable apertures to be located to allow ventilation of the campfire (see col. 6, lines 12-32).

Therefore, in regard to claim 35, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Pederson to incorporate the waved windscreen of Oliver '697 to allow for holes to be located on the outer surface of the wave/ridge that desirably allow ventilation of the campfire (see Oliver '697, col. 6, lines 16-20).

#### ***Allowable Subject Matter***

12. Claims 21-26 and 44 are allowable over the prior art.

#### ***Response to Arguments***

13. Applicant's arguments with respect to claims 10-20 and 27-43 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

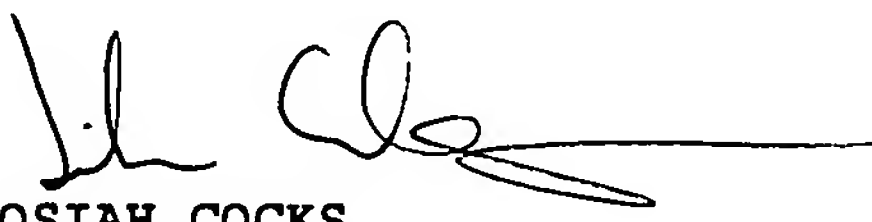
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
May 12, 2005



JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749